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November 16, 2004

Mr. Keith Rake  
Deputy Assistant Commissioner  
Bureau of the Public Debt  
P.O. Box 396  
Parkersburg, WV 26101-0396

**Re: Comments to Notice of Proposed Rulemaking to Revise Regulations  
Governing U.S. Treasury Securities State and Local Government  
Series (SLGS)  
Docket No. BPD-02-04**

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Dear Mr. Rake:

Thank you for providing municipal issuers the opportunity to comment on the proposed changes reflected in the September 30, 2004 Notice of Proposed Rulemaking regarding U.S. Treasury Securities State and Local Government Series (SLGS) securities (the "Proposed Regulations"). These comments are being submitted collectively on behalf of the New York State Division of the Budget, the Dormitory Authority of the State of New York, the Empire State Development Corporation, the New York State Thruway Authority, the New York State Housing Finance Agency, the New York State Environmental Facilities Corporation and the Metropolitan Transportation Authority, which collectively have well in excess of \$75 billion in tax-exempt bonds currently outstanding.

*General Comments*

As discussed in more detail below, we generally support changes that would reduce the administrative burdens placed on the Bureau of Public Debt (BPD) but we are extremely concerned that some of the proposed changes would adversely limit the ability of states, local governments and other governmental agencies to cost effectively manage their tax-exempt debt portfolios and to effectively execute refunding transactions to reduce taxpayer costs. This could very well discourage issuers from making use of the SLGS program. As the BPD is aware, state and local governments across the nation continue to face budgetary challenges and any proposed regulatory changes that would result in a significant cost to local and state governments (or which runs the risk of underestimating such costs) should be thoroughly vetted before being finalized.

To fully appreciate the impact of the Proposed Regulations, it is important to view them in the context of the history of the SLGS program. As indicated in the preamble to the Proposed Regulations, in 1996 the U. S. Treasury adopted revised regulations governing SLGS (the "1996 Regulations") for the express purpose of making them a more cost effective alternative for investing bond proceeds and other funds in a manner that would assist issuers in complying with the Federal arbitrage rules. The 1996 Regulations made the SLGS securities program much more flexible and eliminated many of the regulatory burdens previously imposed. The reforms made by the 1996 Regulations have clearly proven to be successful. Municipal issuers have embraced the SLGS program as an attractive cost-effective vehicle for structuring refunding escrows.

Given this historical perspective, we believe that the changes in the SLGS program contained in the Proposed Regulations need to be more thoroughly analyzed to take into consideration the additional burdens and costs they would impose on issuers of municipal bonds, as more fully discussed below.

#### *Mandatory Use of the SLGSafe On-line Subscription System.*

Following a reasonable introductory period, we support the proposal to exclusively use the web-based SLGSafe System (with a safeguard mechanism in place in the event the SLGSafe System is not functional) to rein in the unwieldy administrative issues that BPD has with fax transmittals for SLGS subscriptions. Since we believe the SLGSafe System will be extremely effective in providing the remedy necessary to address the bulk of BPD's concerns, we strongly recommend that the mandatory use of SLGSafe take effect prior to any other changes to the SLGS program that would have adverse financial implications for local and state governments.

#### *No Longer Set SLGS Rates at Prior Day's Closing Prices*

We have no objection to BPD setting SLGS rates on the morning of each business day rather than the prior evening. However, we strongly suggest that the rates be announced earlier in the business day than 10:00 a.m. Eastern Time to assist those issuers who need to determine their subscriptions at an earlier time.

#### *Hours for Submitting SLGSafe Subscriptions*

We are very concerned that the reduction in the hours during which SLGSafe subscriptions will be received to between 10 a.m. and 6 p.m. Eastern Time will be overly restrictive. Given that purchases of SLGS are often undertaken as part of complex financing transactions, the 6 p.m. deadline may in many cases not provide sufficient time to complete the necessary pricing and verification process of a bond issue. We strongly encourage BPD to maintain the current regulations on this point by continuing to accept subscriptions through 11:59 p.m. EST of the subscription date. Given that under the Proposed Regulations, all subscriptions would be made through SLGSafe, the additional cost and administrative burden to BPD of having a later closing time should be minimized. Moreover, with the proposed change to have SLGS rates set daily on the morning of each day and the fact that SLGS rates are always five basis points below the current Treasury borrowing rate for comparative maturities, we believe

the extended hours (beyond 6 p.m. EST) do not create a meaningful opportunity for seeking to obtain arbitrage profit at the expense of the U.S. Treasury.

#### *Bonds Must be Authorized*

We also support the need to prevent SLGS subscriptions being made by or on behalf of parties other than municipal issuers who do not have a transaction attached to the subscription. However, we believe the language in the Proposed Regulations needs to be further clarified as to what constitutes "authorization of state and local bonds" by the issuer for this purpose. The current language does not appear to take into account the complexities of the timing of state and local approval processes as they relate to the timeframe in which SLGS subscriptions are submitted. Issuers which have a reasonable expectation that the required approvals for a bond issue will be obtained need to have the ability to subscribe for SLGS to effectively and efficiently implement a refunding transaction. Thus, we recommend that the Proposed Regulation be revised to take these approval processes into consideration and provide clearer guidance as to what actions will constitute the requisite authorization of the bonds. This minor, yet important, change in the certification proposal could ease the Treasury's concerns regarding the "shopping of subscriptions," and at the same time allow the natural course of events of a transaction to be unaffected and municipal issuers to secure savings critical to managing state finances and reducing tax-payer costs.

#### *Restrictions on Redemptions of and Reinvestments in SLGS*

We are very concerned about the adverse impact that the prohibitions in the Proposed Regulations on the redemption of SLGS to reinvest in higher-yielding securities and the purchase of SLGS with the amounts received from the redemption of lower-yielding escrow securities will have on the ability of municipal issuers to reduce negative arbitrage. Although the BPD views these transactions as taking advantage of a cost-free option, these redemptions and reinvestments, which are permitted under the current regulations, allow state and local municipal issuers to cost effectively manage their debt portfolio and reduce taxpayer costs by eliminating negative arbitrage. The ability to restructure escrows to make them more efficient should not be perceived as abusive but rather as an effective tool for managing public. Moreover, the initial decision to purchase SLGS to fund a refunding escrow, which under current market conditions as of the date an escrow is structured may have been the most cost-effective alternative, should not result in the issuer being penalized by being locked-out of the ability to redeem the SLGS for reinvestment at a higher rate, once market conditions would otherwise warrant this decision. This puts the issuer at a severe disadvantage as compared with an escrow funded with open market securities and again serves to effectively discourage the use of SLGS in the first place. Finally, on this point, we believe the proposed changes to require the use of SLGSafe and in setting rates on the morning of each business day have already dealt with BPD concerns over administrative issues and the potential for SLGS to have a cost-free interest rate hedge.

### *Prohibition on Cancellation of SLGS Subscriptions*

Under the Proposed Regulations, the BPD would only allow SLGS subscriptions to be cancelled if the "subscriber establishes, to the satisfaction of the Treasury, that the cancellation is required for reasons unrelated to the use of the SLGS program to create a cost-free option." The current rules, which allow issuers to subscribe for SLGS within 60 days of issuance and to cancel subscriptions at least five days (or seven days for subscriptions on amounts over \$10 million) before the scheduled issue date, provides issuers with the flexibility needed to improve the efficiencies of refunding escrows and maximize savings. Although the BPD views this as a cost-free option, it simply allows state and local governments to maximize the efficiency of escrows if rates improve during the relative discrete time in which issuers identify a refunding opportunity to sell bonds. Moreover, given the requirements in the Proposed Regulations that an issuer must have authorized the bonds at issue and must identify the bond issue in the SLGSafe subscription, many of the abusive situations which BPD is concerned about would already be eliminated.

As an alternative to eliminating the right to cancel the subscriptions we suggest that Treasury consider other less drastic regulatory changes, such as imposing a limit on the number of cancellations that can be submitted with respect to a given bond issue. Alternatively, if SLGS subscriptions are to become non-cancelable, we strongly suggest Treasury consider providing that the maximum rates applicable to a given subscription be the highest of the daily SLGS rates for a specified number of days from and including the date of that subscription. Under such a mechanism, an issuer would automatically qualify for the highest daily rates announced during that limited timeframe.

### *Amendments to Subscriptions to Change Delivery Date*

For the myriad of legal and other reasons which are beyond its control, an issuer may need to change its SLGS delivery date. Thus, we recommend retention of the current rule which allows issuers to change the delivery date up to seven days before the SLGS are issued. This would avoid subjecting issuers to the severe penalty of being locked out of the SLGS market for six months for facts that are beyond their control.

### *Amendment of Subscriptions to Change Principal Amount of SLGS*

Under the current regulations an issuer that has subscribed for SLGS may amend the subscription to change the aggregate principal amount specified in the initial subscription by the greater of \$10 million or 10 percent, whichever is greater. The Proposed Regulation would limit this to 10 percent only. We are concerned that this proposed change would disproportionately burden smaller issuers of tax-exempt bonds. We urge the Treasury Department to reconsider the necessity of this change, in light of the other reforms contained in the Proposed Regulation regarding the authorization and identification of a specific bond issue.

*Investments of Amounts Other than Gross Proceeds in SLGS*

Section 344.0(a) of the current SLGS regulations allows an issuer to purchase SLGS with monies that either constitute gross proceeds (as defined in Treasury Regulation 1.148-1(b)) of an issue or any other amounts that "assist an issuer of tax-exempt bonds in complying with applicable provisions of the Internal Revenue Code relating to such tax exemption." While the Proposed Regulations state that the change is being made to "clarify the scope of permissible sources of funds" that may be invested in SLGS, the true effect is to eliminate an investment option without fully explaining the necessity of this change. Moreover, it detracts from the usefulness of the SLGS program as a cost-effective way to comply with the Federal arbitrage restrictions imposed on issuers of tax-exempt debt. We strongly suggest Treasury reconsider this proposal and fully explain the rationale for this change.

*Conclusion*

While we support the BPD's desire to reduce administrative complexities in the SLGS program, we are concerned that many of the proposed changes will eliminate the ability of New York issuers and other municipal issuers across the nation to cost effectively manage their debt portfolios and to secure savings critical to the overall management of their financial plans. Thus, while we recommend that BPD implement SLGSafe System, we believe that the remaining proposed changes to the SLGS Regulations need to be more thoroughly vetted to consider alternatives that will address BPD's concerns and at the same time not impose significant burdens on such issuers. If left in their current form, we are concerned that the Proposed Regulations will have a detrimental effect on the attractiveness to issuers of using SLGS generally.

We look forward to working with BPD and other municipal issuers to improve the SLGS program by making appropriate changes to relieve the administrative burdens placed on BPD, while maintaining the flexibility and benefits of the program to ensure it continues to be a valuable and viable option for the municipal finance community.

Sincerely,

John F. Cape

cc: Genevieve D'Agostino – New York State Housing Finance Agency  
James Gebhardt – Environmental Facilities Corporation  
Patrick McCoy, Metropolitan Transportation Authority  
John Pasicznyk – Dormitory Authority of the State of New York  
Michael Sikule – New York State Thruway Authority  
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